



VOSH PROGRAM DIRECTIVE: 07-006A

ISSUED: April 1, 2003

SUBJECT: Public Participation Guidelines for the Safety and Health Codes Board

A. Purpose.

This revision updates old references and rennumbers these Public Participation Guidelines for the Safety and Health Codes Board to conform to the program directives' new classification and numbering system (See VOSH Program Directive 01-001A).

This directive continues these Public Participation Guidelines under which the Board operates and which are used by the Board for soliciting comments from interested parties when standards and regulations are developed, revised or rescinded.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive is to provide continuity between the procedures of the Safety and Health Codes Board and the operation of the VOSH Program and is for informational purposes only.

C. References.

Not Applicable.

D. Cancellation.

VOSH Program Directive 06-006A (September 1, 1994).

E. Action.

Directors and Managers shall assure that affected personnel are familiar with the provisions of these guidelines.

F. Effective Date.

March 1, 2003.

G. Expiration Date.

Not Applicable.

H. Background.

Section 40.1-22(5) of the Code of Virginia authorizes the Safety and Health Codes Board to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees, and to effect compliance with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Section 40.1-22 also charges the Commissioner of Labor and Industry with the enforcement of such rules and regulations. The Administrative Process Act (APA), specifically Virginia Code § 2.2-4007, requires the Board to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations.

The purpose of the Public Participation Guidelines (PPGs) is to ensure that the public and all parties interested in regulatory action before the Board have a full and fair opportunity to participate at every stage in the development or revision of the regulations.

The Safety and Health Codes Board originally adopted PPGs on September 19, 1984. Since that time, they have been amended several times. Chapter 898 of the 1993 Acts of Assembly amended the APA to require that additional provisions be included in public participation guidelines. Emergency PPGs were developed to comply with the new requirements on an interim basis until new PPGs could be promulgated. The emergency regulations were adopted by the Board on June 21, 1993, with effective dates of June 30, 1993 through June 29, 1994. At that time, the regular promulgation process began for adoption of new permanent regulations which provide guidelines to ensure compliance with legislative revisions and the Executive Order.

The Safety and Health Codes Board adopted the most recent revisions to the final regulations at its meeting on December 2, 2002, with an effective date of March 1, 2003.

I. Summary.

The most recent revisions to the public participation guidelines will conform the regulatory language to the current requirements of the Administrative Process Act and update the APA cites in these guidelines. Also, with the advances in information technology since 1994, amendments are necessary to include the agency web site and other Internet resources that are now available. These changes will ensure that the public has the maximum opportunity to participate in the regulatory process of the Board.

C. Ray Davenport
Commissioner

Attachment: Public Participation Guidelines for the Safety and Health Codes Board

Distribution: Commissioner of Labor and Industry
Directors and Managers
VOSH Compliance Staff
Cooperative Programs Staff
Legal Support Staff
OSHA Regional Administrator, Region III
OSHA Area Office, Norfolk

PUBLIC PARTICIPATION GUIDELINES
16 VAC 25-10-10 et seq.

16VAC25-10-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the board on particular issues under consideration for regulation.

"Administrative Process Act" means Chapter 40 §2.2-4000 *et seq.* of Title 2.2 of the Code of Virginia.

"Board" means the Virginia Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry or his designee.

"Department" means the Virginia Department of Labor and Industry.

"Open meeting" means an informal meeting to provide an opportunity for the board or their designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the board. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"OSHA" means the Occupational Safety and Health Administration, U.S. Department of Labor.

"Public hearing" means an informational proceeding conducted pursuant to §2.2-4007 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the board in accordance with the authority conferred upon it by applicable basic law.

"Secretary" means the Secretary of Commerce and Trade or his designee.

16VAC25-10-20. Applicability.

This chapter shall apply to all regulations subject to the Administrative Process Act which are adopted by the Virginia Safety and Health Codes Board and administered by the Commissioner of Labor and Industry. The guidelines shall not apply to regulations adopted on an emergency basis. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§2.2-4002 of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (§2.2-4006 of the Code of Virginia).

PUBLIC PARTICIPATION GUIDELINES

16 VAC 25-10-10 et seq.

16VAC25-10-30. Purpose.

The purpose of this chapter is to ensure that the public and all parties interested in the regulations have a full and fair opportunity to participate at every stage in the development or revision of the regulations.

The failure of any person to receive any notice or copies of any documents provided under this chapter shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.

At the discretion of the board, the procedures in Part III (16VAC25-10-60 et seq.) or Part IV (16VAC25-10-110 et seq.) may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

16VAC25-10-40. Identification of interested persons and groups.

The major groups interested in the regulatory process of the board are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;
2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and
3. Persons or groups who have asked to be placed on an electronic or mail notification list.

16VAC25-10-50. Public involvement with formulation of regulations.

- A. The board shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The board shall consider the petition and respond in accordance with the Administrative Process Act.
- B. The petition, at a minimum, shall contain the following information:
 1. Name, mailing address and telephone number of petitioner;
 2. E-mail address of petitioner, if applicable;
 3. Petitioner's interest in the proposed action;
 4. Substance and purpose of the requested rulemaking including recommended regulation or addition, deletion or amendment to a specific regulation;
 5. Statement of need and justification for the proposed action;

PUBLIC PARTICIPATION GUIDELINES

16 VAC 25-10-10 et seq.

6. Statement of impact on the petitioner and other affected persons;
7. Reference to the legal authority of the agency to take the action requested; and
8. Supporting documents, as applicable.

16VAC25-10-60. Advisory groups and consultation.

- A. The board may form a standing or ad hoc advisory group to make recommendations on a proposed regulation. When an ad hoc advisory group is formed, it shall include representatives from the interested persons or groups identified in 16VAC25-10-40. The membership of any ad hoc advisory group shall be selected by the board or, at the board's option, by a committee of board members or, at the direction of the board, by the commissioner.
- B. Ad hoc advisory groups or consultation with groups or individuals will be used when the regulation proposed is unique to Virginia or more stringent than existing federal regulations.
- C. Ad hoc advisory groups or consultation with groups or individuals may be used when:
 1. The proposed regulation is of wide general impact;
 2. The proposed regulation is of wide general interest to the public;
 3. The subject of the regulation has not been regulated previously by the board;
 4. The board determines this is the most effective method to develop the regulation; or
 5. The board determines additional technical expertise and knowledge would be beneficial in developing the regulation.

16VAC25-10-70. Open meetings.

The board may schedule an open meeting or meetings to provide information and to receive views and comments and answer questions from the public. The meetings will normally be held at locations throughout the Commonwealth, but if the proposed regulation will apply only to a particular area of the state, it will be held in the affected area. These meetings may be held prior to the beginning of the formal regulatory process or during the Notice of Intended Regulatory Action period or during the 60-day comment period on proposed regulations and will be in addition to any public hearing.

PUBLIC PARTICIPATION GUIDELINES
16 VAC 25-10-10 et seq.

16VAC25-10-80. Notice of Intended Regulatory Action (NOIRA).

- A. The board shall issue a NOIRA whenever it intends to develop, amend or repeal any regulation subject to the Administrative Process Act (APA). The NOIRA will include all of the information required by the APA.
- B. If appropriate, the board will appoint an advisory group as outlined in 16VAC25-10-60.
- C. The NOIRA will be disseminated to the public via:
 - 1. Distribution by mail, facsimile, e-mail or other appropriate delivery method to persons interested in the Board's regulatory process;
 - 2. Publication in the Virginia Register of Regulations;
 - 3. Publication on the Regulatory Town Hall web site; and
 - 4. Posting on agency web site.

16VAC25-10-90. Proposed regulations.

- A. After consideration of public comment, the board may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.
- B. The board will submit the proposed regulation to a 60-day public hearing or comment period by forwarding the appropriate documents to the Registrar of Regulations and the Regulatory Town Hall by the established submission date for the desired date of publication in

The Virginia Register and the beginning of the 60-day comment period. The proposed regulation will also be posted on the agency's web site and distributed by mail, facsimile or e-mail to persons on the appropriate notification list.

16VAC25-10-100. Completion of the adoption process.

- A. The board shall prepare a summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments. A draft of the board's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.
- B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.

PUBLIC PARTICIPATION GUIDELINES

16 VAC 25-10-10 et seq.

- C. The final regulation shall be submitted to the board for adoption.
- D. The board shall submit the final regulation to the Registrar of Regulations and the Regulatory Town Hall for publication in the Virginia Register at least 30 days prior to the effective date of the regulation.

16VAC25-10-110. General.

The Virginia State Plan for the enforcement of occupational safety and health laws commits the state to adopt regulations that shall be at least as stringent as the standards promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, participation in the formulation of such regulations must occur during the adoption of the regulations at the federal level. To encourage such participation the following actions will be taken.

16VAC25-10-120. Notice of proposed federal regulatory action.

- A. When advised of proposed federal regulatory action, the board will prepare a general notice of the proposed federal regulatory action for publication on the agency's website. The general notice will include:
 - 1. Subject of the proposed regulation;
 - 2. Summary of the issue involved and purpose of the proposed regulation;
 - 3. Timetable for submitting written comments or notification of desire to be heard at hearing or both;
 - 4. Time and place of public hearing;
 - 5. Request that comments be submitted to OSHA with a copy to the Virginia Department of Labor and Industry;
 - 6. Name and address of contact at OSHA; and
 - 7. Copy of proposed regulation or link to OSHA proposed federal action.
- B. The notice will be disseminated to the appropriate persons or groups identified in accordance with 16VAC25-10-40.